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Thursday, February 17, 2000

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
In re

JANE ANN VERNON,

No. 99-12708

[Debtor](#)  (s).

Memorandum of Decision

[Chapter 7](#)  debtor Jane Ann Vernon is a single mother with a 10-year-old son. She made her living as a housekeeper until June, 1999, when pain in her knee became too great to keep working. Unable to pay the mortgage payments on her home at 79 DeWitt Avenue, Napa, California, Vernon moved in with a friend and rented out her home on a month-to-month basis. Vernon intended to return to the property when she was able to return to work following rehabilitation from knee surgery, which she had on November 1, 1999. Vernon had recorded a declaration of homestead of the property in 1995. She filed a Chapter 7 petition on August 30, 1999, and declared the property exempt under California Code of Civil Procedure §§ 704.910 *et seq.* The Chapter 7 [trustee](#)  objects. Under California law, temporary absence from a declared homestead does not constitute an abandonment of the homestead or terminate the right to [claim](#)  the exemption. *Webb v. Trippet* (1991) 235 Cal.App.3d 647, 651; *In re Anderson*, 824 F.2d 754, 757 (9th Cir. 1987). In *Webb v. Trippet*,

the court upheld a declared homestead exemption where the debtor had been absent for more than two years, reversing a trial court ruling that continuous residency was required. The court of appeal held that the debtor must prevail because the [creditor](#) did not show that the debtor had established another residence. 235 Cal.App.3d at 652. The trustee relies primarily on two reported bankruptcy court cases, In re Yau, 115 B.R. 245 (Bkrtcy.C.D.Cal.1990), and In re Pham, 177 B.R. 914 (Bkrtcy.C.D.Cal.1994). The court finds neither case fully supportive of the trustee's position. In Yao, as here, the debtors had rented out their homesteaded property and moved into the home of a benefactor. However, the holding in that case was merely that the debtors, as a matter of fact, had not established that their absence was temporary. They provided no evidence as to when they intended to return, if ever. The court concluded that the debtors were not in fact temporarily absent, and were therefore not entitled to the exemption. 115 B.R. at 249. In this case, the trustee has stipulated that Vernon intends to return to her home. Even in the absence of such a stipulation, the record clearly shows that Vernon intended to return to her home as soon as she had recovered from knee surgery and could again afford to make the payments. In Pham, the court overruled the trustee's objection and allowed the homestead exemption. However, the trustee in this case cites dicta in Pham to the effect that even with a declared homestead the debtor must reside in the property on the date of the filing of the [bankruptcy petition](#). 177 B.R. at 918. Reliance upon this wording, and similar statements in other cases, is misplaced because the term "reside" is a legal one and *includes temporary absences*. The definition of "homestead" under California law is set forth in C.C.P. § 704.710(c). Prior to 1983, the statute contained the word "actually" before "resides" or "resided" in various places. The 1983 amendments deleted the word "actually" in order to make it clear that temporary absences do not defeat the exemption. 17 Cal.L.Rev.Comm. Reports 854 (1983); In re Dodge, 138 B.R. 602, 607 (Bkrtcy. E.D.Cal.1992). Likewise, the Ninth Circuit decision in Anderson does not compel a ruling in favor of the trustee. In that case, the trial court made a factual finding that the debtors were not residing in the property at issue on the date of the bankruptcy. 824 F.2d at 756-57. Here, this court's finding is the opposite: while Vernon was not *actually* residing in her home when she filed her bankruptcy petition, her absence was temporary. Accordingly, the court finds her to have been residing in the home even without *actual* residency on the date of filing. Due to a crippling injury, Vernon was temporarily unable to afford her house payments. The law is not so cruel as to provide that she lost her home because she temporarily rented it in order to save it. The trustee's objection will accordingly be overruled. Counsel for Vernon shall submit an appropriate form of order.

Dated: February 17, 2000

Alan Jaroslovsky

United States [Bankruptcy Judge](#)

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